IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 162 of 2026

Decided on: 3.7.2026

Sarita Diwan & ors.

... Petitioners

Versus

Mukhtiaro Devi & ors.

...Respondents

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Petitioners: Mr. Sunny Dhatwalia, Advocate.

For the Respondents *:* Mr. Amit Dhumal, Advocate, for respondents No. 1 to 3.

Virender Singh, Judge (oral)

Petitioners have filed the present petition, under Article 227 of the Constitution of India, against the order dated 9.2.2026, passed by the learned Senior Civil Judge, Nadaun, District Hamirpur, H.P. (hereinafter referred to as 'the trial Court'), in Civil Suit No. 187 of 2020, titled as, 'Sarita Diwan & others versus Mukhtiaro Devi & ors.'.

2. For the sake of convenience, the parties to the lis are referred to, in the same manner, in which, they were referred to, by the learned trial Court.

3. Brief facts leading to filing of the present petition, on the basis of documents, annexed with the petition, may be summed up as under:

The plaintiffs have filed suit for permanent prohibitory injunction, restraining the defendants, their family members, their agents and servants or assignee from raising any construction, digging the suit land for raising construction, changing nature of the suit land, covering best portion of the suit land, bearing khata No. 38 Min, Khatauni No. 39, Khasra No. 313/166, area measuring 0-10-67 heqts. situated in Mohal Kheri, Mauza Naughi, Tehsil Nadaun, District Hamirpur, H.P. till partition by the competent Court of law, from interfering, in any manner, over land comprising in khata No. 39, khatauni No. 40, khasra No. 310/145, area measuring 0-01-93 hects situated in Mohal Kheri, Mouza Naughi, Tehsil and District Hamirpur, H.P.

3.1. The plaintiffs have also sought relief that in case, defendants succeed in raising any construction and changing the nature of the suit land, during pendency of the suit, then, relief of possession by way of demolition, be also granted to them.

3.2. The suit has been filed further on the ground that the plaintiffs are co-owner of the possession of the suit land, alongwith defendants No. 1 and 2. The suit land is stated to be joint between the parties and the same has not been partitioned by metes and bounds. The suit land abuts to National Highway Dharamshala-Shimla, and is a valuable piece of land.

3.3. According to the plaintiffs, defendants are strong headed persons and in order to grab the best portion of the suit land, abutting to the road, have started collecting construction material, in order to raise construction forcibly, and when the request was made by the plaintiffs not to do so, the defendants turned down their request. Hence, the suit has been filed.

4. The suit, has been contested by the defendants, by filing written statement, in which, they have taken preliminary objections that the suit is not maintainable; plaintiffs have no locus standi to file the present suit, the plaintiffs have not approached the Court with clean hands and have suppressed the material facts from the Court; the plaintiffs have estopped by their own acts and conduct from filing the present suit; and that the defendants are entitled for special cost under Section 35-A of the CPC, for frivolous and vexatious suit.

4.1. On merits, the suit has been contested on the ground that the suit land has been partitioned through metes and bounds, through their mutual arrangements, and the parties are having their separate possession. It has also been pleaded that the defendants have developed their land by spending huge money. According to them, defendants No. 1 and 2 had purchased the land, out of khasra No. 313/166 in the month of February, 2020, and the previous owner has

shifted the possession of the same to defendants No. 1 and 2.

4.2 Thereafter, as per the oral agreement, between the parties, all the parties settled their possession, as per their respective shares and the defendants No.1 and 2 have constructed the iron/tin shed over less than their share, in the month of March, 2020, much prior to filing of the suit.

5. The plaintiffs have filed replication, denying preliminary objections, as well as, contents of the written statement, by virtue of which, the suit has been contested, and have re-asserted that of the plaint.

6. Thereafter, the issues were framed and when, the case was listed for PWs, then, an application under Order 6 Rule 17 CPC has been moved, with a prayer to permit the plaintiffs to amend the pleadings by substituting para No. 3(a) in the pleadings. The proposed amendment is stated to be necessary, as according to the plaintiffs, during pendency of the suit, defendants have raised construction of hut/tin shed, adjoining to the road covering best portion of the suit land, more

than their due share. The defendants are also stated to have made encroachment over khasra No. 310/145. Hence, a prayer has been made to allow them to amend their pleadings. In addition to this, Para 3(a) is proposed to be added in the prayer clauuse of the plaint.

7. According to the plaintiffs, proposed amendment is based upon the subsequent events and the same is not likely to change the nature of the suit land. This application has been contested by the defendants by taking preliminary objections that the application is not maintainable, and the same is false and frivolous.

8. On merits, the contents of paras 3 and 4 of the application have also been contested by denying that the construction of tin shed has been made, as alleged, however, according to them, the same is existing on the spot, prior to filing of the suit and the same had been raised by them, with the consent of the plaintiffs.

9. The learned trial Court, in the present case, has considered the rival contentions of the parties, and thereafter the same has been dismissed, vide order dated 9.2.2026.

10. The said order has been assailed, before this Court, mainly on the ground that the learned trial Court has wrongly dismissed the application, as the learned trial Court has not seen the report of the Local Commissioner, nor any report from the revenue officials has been called and the application has been dismissed.

11. The impugned order has been assailed further on the ground that as per the report of the Local Commissioner, a tin shed existing on the spot is new. The learned trial Court is stated to have exceeded its jurisdiction and wrongly dismissed the application.

12. On the basis of above facts, Mr. Sunny Dhatwalia, Advocate, appearing for the petitioners/plaintiffs has prayed that the present petition may kindly be allowed by setting aside the order, dated 9.2.2026, and the application under Order 6 Rule 17 CPC may kindly be allowed, as prayed for.

13. The prayer, so made by learned counsel for the petitioners/plaintiffs, has been opposed by Mr. Amit Dhumal, Advocate, appearing for respondents No. 1 to 3, on the ground that the application has been moved after

commencement of the trial, and there is no averment in the application to fulfill the essentials for seeking amendment, after commencement of the trial, as provided by the proviso, added with Order 6 Rule 17 CPC. It has also been pointed out that a bare reading of application under Order 6 Rule 17 CPC shows that the application for amendment is nothing, but the delaying tactics, as according to the proposed amendments, the alleged tin shed was raised in the month of August and September, 2020, whereas, the application for amendment has been moved after a gap of about 4 years, i.e. 30.4.2024. Highlighting these facts, it has been submitted that the petitioners have miserably failed to prove due diligence, which is sine-qua non for accepting the application, after commencement of trial, in the present case.

14. Heard.

15. The petitioners are before this Court under Article 227 of the Constitution of India. The scope of interference in the present petition, filed under Article 227 of the Constitution of India, has elaborately been

discussed by the Hon'ble Supreme Court in a case titled as, **"K. Valarmathi & ors. Versus Kumaresan"** 2025 INSC 606. Relevant paragraph-9 of the judgment is reproduced as under:

> *"Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the Court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise to supervisory jurisdiction under Article 227."*

16. In addition, in **Nandi Infrastructure Corridor Enterprises Ltd. & anr. versus B. Gurappa Naidu & ors**., 2026 INSC 434, the scope of interference under Article 227 of Constitution of India, has again been explained by the Hon'ble Supreme Court. Relevant paragraph-35 of the judgment is reproduced as under:

> *"35. In short, the principles laid down in the above matters is as follows:*
>
> *a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*
>
> *b) It is also well settled that the High Court while acting under this Article cannot exercise its power as an*

appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.

c) The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal."

17. Being guided by the aforesaid judgments of the Hon'ble Supreme Court, now, this Court would proceed further to ascertain the fact whether the learned trial Court has exceeded its jurisdiction or the learned trial Court has refused to exercised the jurisdiction, vested in it. Admittedly, the application for proposed amendment has been moved after commencement of trial. Hence, the proviso added to Order 6 Rule 17 CPC comes into play. Provisions of Order 6 Rule 17 CPC are reproduced as under:

"Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties;

> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

18. A bare reading of Order 6 Rule 17 CPC mandated that the application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

19. The term 'due diligence' has elaborately been discussed by the Hon'ble Supreme Court in **Chander Kanta Bansal versus Rajinder Singh Anand**, reported in (2008) 5 Supreme Court Cases 117. Relevant paragraphs 6, 16, 17 and 18 of the judgment are reproduced as under:

> *"6. The trial Court, after hearing the arguments, allowed the amendment application on 18.11.2004. Against that order, the respondent herein filed a C.M.(Main) No. 136 of 2005 before the High Court of Delhi. By order dated 22.11.2006, the High Court allowed the petition and set aside the order passed by the trial Court on 18.11.2004 in the amendment application. Aggrieved by the said order, the appellant preferred the present appeal by way of special leave before this Court.*

16. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.

17. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.

18. As rightly referred to by the High Court in Union of India vs. Pramod Gupta (dead) by LRs and Others, (2005) 12 SCC 1, this Court cautioned that delay and laches on the part of the parties to the proceedings would also be a

relevant factor for allowing or disallowing an application for amendment of the pleadings."

18. If the facts and circumstances of the present case are seen in the light of above decision of Hon'ble Supreme Court, in the absence of any explanation as to why no application for amendment was moved after four years, the learned trial Court has rightly dismissed the application and by nostretch of imagination, it can be said that the learned trial Court has exceeded its jurisdiction in dismissing the application, as existence of the tin shed on the spot, has duly been mentioned in the written statement, filed by the defendants, in para-1 of the written statement.

19. At the cost of repetition, delay of four years in moving the application has not been explained. The plaintiffs have not bothered to mention the essential ingredients of Order 6 Rules 17 CPC, in the application, i.e. reasoning qua the due diligence.

20. In view of above, there is no scope for this Court to interfere with the well reasoned order, passed by the

learned trial Court. Consequently, the present petition is dismissed.

21. The pending application(s), if any, are also disposed of.

(Virender Singh)
Judge

3.7.2026
Kalpana